

**United States Court of Appeals - Tenth Circuit**

**CRIMINAL JUSTICE ACT**

**CLAIMS FOR HOURLY COMPENSATION & EXPENSE REIMBURSEMENT**

**DEATH PENALTY MATTERS**

**21 U.S.C. § 848(q)**

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**ADVICE TO COUNSEL  
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ADVICE TO COUNSEL

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**I. General Statutory Provisions and Procedures**

As a general matter, counsel appointed under the Criminal Justice Act may be compensated for time “reasonably expended” and expenses “reasonably incurred.” 18 U.S.C. § 3006A(d)(1). In capital cases, the statutory authority for appointment derives from 21 U.S.C. § 848(q). Hourly compensation in both direct capital appeals and post conviction capital cases may be set up to \$125 per hour. See § 848(q)(10)(A).

Upon receipt of an appeal involving imposition of a death sentence, the court will issue an ex parte case management order setting a date and time to discuss issues related to appointment and payment of counsel. In that order, the court will direct counsel to prepare a proposed litigation budget for submission to the court. **The proposed budget must be submitted at least 14 days prior to the conference.** At the time the proposed budget is filed, counsel may also submit any requests for interim payment and motions to set rates of pay. Following the conference, the Chief Judge or her designee will review, modify where necessary, and approve, the proposed budget.

Counsel is encouraged to visit the CJA link on the court’s website (<http://www.ck10.uscourts.gov>) to review current rates, forms, and general information.

**II. When to File**

Counsel may file a motion requesting interim payments. That motion may be filed in conjunction with counsel’s proposed litigation budget. *Counsel should note, however, that the court will retain 25% of all approved interim payments subject to reapplication at the conclusion of the appeal. The claim for retainage must be reported in Block No. 17 (Other Expenses) of the CJA 30 form. The panel rendering the decision will consider release of retained amounts.*

### **III. What to File with CJA 30 Form**

#### **A. Compensation Worksheets**

Attorney time must be documented on the enclosed worksheets, or on a substantially similar form. Time must be broken down according to date (in chronological order), description of services, amount of time in hours and tenths of an hour, and according to the categories established for payment under the CJA. If billing records are not reported in tenths of an hour, the court will return the voucher to counsel for correction.

Use of the enclosed worksheets facilitates the court's review of counsel's request for compensation, but billing records may be submitted in place of the worksheet so long as they are in chronological order, all hours claimed are assigned to one of the CJA categories, and the totals for each category are listed on the face of the voucher.

Failure to provide sufficient detail to permit meaningful review of a claim may result in delay or denial of approval of the claim.

Note: records must be retained by counsel for three years after approval of the voucher.

#### **B. Expense Worksheets**

Expenses must be documented on the enclosed expense worksheets, or on a substantially similar form. Counsel must provide expense documentation to support claims for reimbursement, such as bills, receipts, or invoices. Credit card slips and credit card statements are *not* sufficient.

### **IV. Claims for Hourly Compensation - General Rules**

#### **A. Partners and Associates**

Compensation may be claimed for services provided by a partner or associate in appointed counsel's law firm, but extra tasks or other work inefficiencies resulting from such division of labor (e.g., attorney conferencing) is not compensable.

## **B. Travel Time**

Necessary and reasonable travel time is compensable. Time spent in travel by car over long distances ordinarily traversed by air is not reasonable, unless required by special circumstances. If a trip requires overnight lodging, compensable travel time includes time traveling from the claimant's office or home to the place of accommodation, as well as travel time returning directly to the claimant's office or home.

## **C. Petition for Writ of Certiorari**

Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari, or responding to a petition for writ of certiorari filed by the government, are considered as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in that court.

## **D. District Court Work**

Claims for work done incidental to representation in district court (even if on remand) may not be included on an appellate voucher.

## **E. Voucher Preparation**

Time spent preparing the voucher is not compensable.

# **V. Reimbursement of Travel Expenses - General Rules**

## **A. Reporting Travel Expenses on Voucher**

Claims for travel expenses must be itemized and reported in Block 16 of the CJA 30 form.

## **B. Supporting Documentation for General Travel Expenses**

All travel expenses (surface transportation, lodging, meals, mileage, parking, tolls, etc.) must be supported by receipts; credit cards slips and credit card statements are *not* sufficient.

### **C. Determination of Reasonable Expenses**

Reimbursement is limited to reasonable, actual expenditures. To determine whether expenses are reasonable, counsel should be guided by limitations on travel expenses applicable to federal judiciary employees, contained on the attached *Criminal Justice Act Payment Rates*. Rate updates are available from the Clerk's office upon request.

### **D. Supporting Documentation for Lodging/Meals**

Receipts for lodging and meals must be sufficiently detailed to establish that reimbursement is not being sought for alcoholic beverages, safe deposit boxes, hotel safes, in-room movies, or other expenses that are not reimbursable under the CJA. For this reason, hotel and restaurant bills must be submitted; credit card receipts or credit card statements are *not* sufficient.

### **E. Air Travel**

Air travel should be arranged through National Travel Service and government rates obtained for both transportation and lodging. Copies of the travel authorization issued by this court, NTS itinerary, and passenger receipt should be attached to the voucher.

### **F. Travel by Private Automobile**

Automobile mileage is reimbursable at the rate prescribed for federal judiciary employees conducting official business. Claims should be supported by a statement showing the date, distance, origin and destination of travel. If travel is by automobile, the total mileage expense shall not exceed the fare authorized by National Travel Service for tourist-jet accommodation, except in an emergency, or other unusual circumstances.

### **G. Hotel Telephone**

Hotel telephone charges are reimbursable only if incidental to representational duties. Counsel must explain how the charge is incidental to representational duties to receive reimbursement.

### **H. Personal Items**

Personal items (alcoholic beverages, in-room movies, etc.) are not reimbursable.

## **VI. Reimbursement of Other Expenses - General Rules**

### **A. Reporting Other Expenses on Voucher**

Claims for non-travel expenses must be itemized and reported in Block 17 of the CJA 30 form.

### **B. Supporting Documentation for Other Expenses**

Counsel must provide expense documentation to support claims for reimbursement, such as bills, receipts, or invoices; credit card slips and credit card statements are *not* sufficient.

### **C. In-House Copying**

In-house copying is limited to actual costs, and no more than \$.10 per page. If a higher rate is sought, counsel must submit a memorandum showing why the rate is justified. In-house copying must be itemized and must contain the (a) description of the document(s) copied; (b) number of pages copied; and (c) cost per page (limited to \$.10 per page).

### **D. Commercial Copying**

Claims for commercial copying services must be supported by an itemized invoice; credit cards slips and credit card statements are *not* sufficient. The itemized invoice must contain the (a) case number; (b) description of the document(s) copied; (c) number of pages copied; and (d) cost per page.

### **E. Long-Distance Telephone Calls**

Itemized statements must be submitted to support claims for long-distance telephone calls. The supporting documentation must contain the date, cost, recipient of each call, and a short explanation of how the call related to counsel's appellate representation.

### **F. Facsimile Transmissions**

Itemized statements must be submitted to support claims for in-house facsimile transmissions. The supporting documentation must contain the date, total cost (including per page rate), recipient of the document, and a short explanation of how the facsimile transmission related to counsel's appellate representation.

Claims for facsimile transmissions at a commercial establishment must be supported by a detailed receipt. The supporting documentation must contain the date, total cost (including per page rate), recipient of the document, and a short explanation of how the facsimile transmission related to counsel's appellate representation.

#### **G. Postage/Expedited Mail/Courier**

Itemized statements must be submitted to support claims for postage. The supporting documentation must contain the postal receipt (if any), date, nature of service, and cost. If a postage receipt is unavailable, counsel must submit a detailed in-house postage log.

Federal Rule of Appellate Procedure 25(a)(2)(B) states that a brief or appendix is timely filed, if on or before the last day for filing, it is:

- (1) Mailed to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage prepaid; or
- (2) Dispatched to a third-party commercial carrier for delivery to the clerk within 3 calendar days.

Therefore, the added expense for overnight delivery is not reimbursable. The use of expedited mail for filing the petition for rehearing is reimbursable (the court recognizes the short time period for its filing), if proper supporting documentation is provided.

Professional time spent traveling to the court to file a pleading is not compensable.

#### **H. Legal Research by Law Student, Law Clerk, Paralegal**

Claims for the actual cost of legal research by a qualified law student, law clerk, legal assistant, or paralegal, must be itemized on the attached "Law Student, Law Clerk, Legal Assistant & Paralegal Worksheet." A separate worksheet is required for each person. Time expended by these individuals may not be claimed as compensation but would more properly be claimed as an expense. Counsel must also submit a brief statement of the need for and subject matter of the research, an estimate of the cost of attorney time that would have been required to do the research, and the actual hourly cost of employing such personnel.



## **I. Computer Assisted Legal Research**

Claims for the actual cost of computer assisted legal research must be supported with a brief statement of the subject matter of the research, the length of time to perform the research, and a copy of the bill for the service or an explanation of the precise basis for the charge.

## **J. General Office Overhead**

General office overhead is not reimbursable—this includes, but is not limited to: supplies; overtime; secretarial services; rent; telephone services; mailers/envelopes; time spent copying, faxing or mailing documents; and other administrative/clerical services (nor is professional time spent on such tasks compensable as part of counsel's fee).

## **K. Expenses of Personal Nature for Individual Representing**

The cost of items of a personal nature purchased for or on behalf of the person represented is not reimbursable.

## **L. Interpreter Services**

Prior authorization from the presiding judicial officer must be secured for all interpreter services. Prior authorization shall be sought by filing a motion including an estimation of the costs and a statement why the expense is reasonable and necessary. Failure to obtain prior authorization will result in the disallowance of any amount, unless the presiding judicial officer finds that, in the interest of justice, timely procurement of necessary services could not await prior authorization.

## **M. Filing Fees**

Filing fees are not reimbursable.

## **N. Transcript Fees**

The cost of court-authorized transcripts should be claimed by the court reporter or reporting service on a CJA 24 form; if counsel has elected to pay for these, counsel should likewise seek reimbursement on a CJA 24 form, not a CJA 30 form.

## **VII. General Information**

### **A. Public Disclosure**

CJA 30 vouchers filed by counsel may be subject to public disclosure unless disclosure should be limited based upon: (1) protection of any person's Fifth Amendment right against self-incrimination; (2) protection of the defendant's Sixth Amendment right to effective assistance of counsel; (3) the defendant's attorney-client privilege; (4) the work-product privilege of defendant's counsel; (5) the safety of any person; or (6) any other interest that justice may require. If counsel wishes to request redaction or non-disclosure of any portion of the voucher based upon one of these interests, counsel should seek such relief by motion at the time the voucher is filed. Absent such a motion, the face of the voucher will be made available to the public upon request.

### **B. Panel Attorney Data Form**

**Counsel is required to provide his/her social security number by completing a Panel Attorney Data Form, which is included with your voucher. If prior to your appointment, you had a pre-existing agreement with a law firm or corporation, including a professional corporation, indicating the CJA earnings belong to the law firm or corporation, rather than to you as the court-appointed attorney, provide the name and address of that law firm or corporation on the Panel Attorney Form. This information will allow earnings to be reported to the Internal Revenue Service (IRS) on a 1099 Statement as earnings of the law firm or corporation and not as earnings of the attorney appointed.**

The Panel Attorney Data Form enables CJA counsel to enter their social security number and their law firms's taxpayer identification number, on the following basis:

- (1) If the appointed attorney does not have a preexisting agreement with a law firm or corporation, including a professional corporation, an information return will be filed with the IRS in the attorney's name. The attorney must enter his or her social security number in this situation.
- (2) If the appointed attorney has a preexisting agreement with his or her law firm or corporation, including a professional corporation, (resulting in income being reportable by the law firm) an information return will be filed with the IRS in the law firm's name. Thus, the attorney must enter his or her social security number, **and** the law firm's employer tax identification number, and name and mailing address of the law firm.

### **C. Court's Website**

Counsel is encouraged to visit the CJA link on the court's website (<http://www.ck10.uscourts.gov>) to review current rates, forms, and general information.

### **VIII. Note to Counsel**

This letter addresses only subjects of repeated error or frequent inquiry and is not inclusive. Questions regarding the completion of vouchers are welcome.

*Source:* Volume VII, Guide to Judiciary Policies and Procedures, Chapter VI, §§ 6.01-6.03

## CRIMINAL JUSTICE ACT PAYMENT RATES

### **Professional Services Delivered**

#### Hourly Rates

|              |              |
|--------------|--------------|
| In-court     | \$125.00/hr. |
| Out-of-court | \$125.00/hr. |

### **Travel Expenses Incurred**

| <u>Mileage</u>            | <u>2001</u>        | <u>2002</u>        | <u>2003</u>        | <u>2004</u>        |
|---------------------------|--------------------|--------------------|--------------------|--------------------|
| (privately owned vehicle) | (01/22/01 & after) | (01/21/02 & after) | (01/01/03 & after) | (01/01/04 & after) |
|                           | \$.34.5/mile       | \$.36.5/mile       | \$.36/mile         | \$.37.5/mile       |

**Subsistence (lodging & meals):** Actual cost subject to these local rates.

| <u>Location</u>               | <u>2000</u>       | <u>2001</u>       | <u>2002</u>       | <u>2003</u>        |
|-------------------------------|-------------------|-------------------|-------------------|--------------------|
| <b><u>Colorado</u></b>        |                   |                   |                   |                    |
| Denver                        | \$125             | \$128             | \$154             | \$158              |
|                               | (up to 9/30/00)   | (up to 9/30/01)   | (up to 9/30/02)   | (up to 9/30/03)    |
|                               | \$128             | \$154             | \$158             | \$159              |
|                               | (10/1/00 & after) | (10/1/01 & after) | (10/1/02 & after) | (10/01/03 & after) |
| <b><u>Kansas</u></b>          |                   |                   |                   |                    |
| Kansas City/<br>Overland Park | \$123             | \$123             | \$123             | \$126              |
|                               |                   |                   | (up to 9/30/02)   | (up to 9/30/03)    |
|                               |                   |                   | \$127             | \$131              |
|                               |                   |                   | (10/1/02-11/7/02) | (10/01/03 & after) |
|                               |                   |                   | \$126             |                    |
|                               |                   |                   | (11/8/02 & after) |                    |
| Topeka                        | \$85              | \$85              | \$85              | \$85               |
| Wichita                       | \$96              | \$97              | \$97              | \$101              |
|                               | (up to 9/30/00)   |                   | (up to 9/30/02)   | (up to 9/30/03)    |
|                               | \$97              |                   | \$101             | \$102              |
|                               | (10/1/00 & after) |                   | (10/1/02 & after) | (10/01/03 & after) |

**Subsistence (lodging & meals):** Actual cost subject to these local rates.

| <b><u>Location</u></b>   | <b><u>2000</u></b>                                    | <b><u>2001</u></b> | <b><u>2002</u></b>   | <b><u>2003</u></b>   |
|--------------------------|---|--------------------|--|--|
| <b><u>New Mexico</u></b> |   |                    |  |  |
| Albuquerque              | \$98<br>(up to 9/30/00)<br>\$103<br>(10/1/00 & after) | \$103              | \$103<br>(up to 9/30/02)<br>\$107<br>(10/1/02-<br>12/14/02)<br>\$114<br>(12/15/02 & after) | \$114<br>(up to 9/30/03)<br>\$111<br>(10/1/03 & after)   |
| Santa Fe                 | \$136   | \$136              | \$145  | \$145  |
| Jan. 1–Apr. 30           |   | (up to 9/30/01)    |  | (up to 9/30/03)  |
| May 1–Oct. 31            |   | \$145              |  | \$146  |
| Nov. 1–Dec. 31           |   | (after 10/1/01)    |  | (10/01/03 & after)   |
| <b><u>Oklahoma</u></b>   |   |                    |  |  |
| Oklahoma City            | \$103   | \$103              | \$103<br>(up to 9/30/02)<br>\$107<br>(10/1/02 & after)                                     | \$107<br>(up to 9/30/03)<br>\$110<br>(10/1/03 & after)   |
| Tulsa                    | \$85  | \$85               | \$85   | \$85<br>(up to 9/30/03)<br>\$88<br>(10/01/03 & after)  |
| <b><u>Utah</u></b>       |   |                    |  |  |
| Salt Lake City           | \$117   | \$117              | \$117<br>(up to 1/14/02)<br>\$211<br>(1/15/02-2/28/02)<br>\$117<br>(3/1/02 & after)        | \$117<br>(1/1/03 - 1/14/03)<br>\$207<br>(1/15/03-2/28/03)<br>\$113<br>(3/1/03-9/30/03)<br>\$119<br>(10/1/03 & after) |
| <b><u>Wyoming</u></b>    |   |                    |  |  |
| Casper                   | \$85  | \$85               | \$85   | \$85   |
| Cheyenne                 | \$85  | \$85               | \$85   | \$85   |